IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2865 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANILKUMAR RIKABCHAND JAIN - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MS ARCHANA R ACHARYA for Applicant(s) : 1,
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,
MR NV GANDHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/04/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr. U.R.Bhatt waives service of rule on behalf of the respondent no.1 while Mr.Gandhi waives service of

rule on behalf of the respondent no.2-original complainant.

2. This application under Section 482 of the Code of Criminal Procedure is preferred by the applicant with a prayer to quash and set aside the complaint filed by the opponent no.2 being Private Criminal Complaint no.1243 of 2004 on the file of the Judicial Magistrate, First Class (1st Court), Surat as also the issuance of summons thereto qua the present applicant. The respondent no.2 herein lodged Private Complaint no.1243 of 2004 against the present applicant and four other persons including Arihant Dyeing & Printing Mills Private Limited for the alleged offences punishable under Sections 138 and 141 of the Negotiable Instruments Act and the learned Magistrate had issued summons for the said offences.

3. The respondent no.2-complainant, in the complaint alleged that he was the Director of accused no.1-Company and had subsequently resigned on 30-3-2003. At the time of resignation of the respondent no.2, one of the Directors of the accused no.1-Company entered into a Memorandum of Understanding (MOU) with the respondent no.2 and three others wherein it was understood between the parties that the first party would pay Rs.41 lacs (Rupees forty one lacs only). To the second party. Accordingly, cheques bearing nos.825912 drawn on Bank of Maharashtra, Surat Branch, for Rs.4 Lacs came to be issued and on presentation of the said cheque by the opponent no.2 in the bank on 1-2-2004, the same were dishonoured on 4-2-2004 with the endorsement

"Payment stopped by drawer". The respondent no.2 issued a statutory notice on 22-2-2004 to all the Directors including the present applicant alleging that the present applicant was in charge of the day to day affairs of the company and responsible for the conduct of the business of the Company. The applicant replied to the notice by communication dated 24-2-2004. However, since the applicant had not made the payment of the amount within 15 days of the notice the respondent no.2 filed Private Criminal Complaint as referred to in para-1 of this judgment. Hence, the present Criminal Misc. Application.

4. It is the case of the present applicant that he was not a Managing Director or Jt.Managing Director of the accused no.1 Company and was also not in charge of the day to day affairs of the company or for its business at the time of execution of the said Memorandum of Understanding , at the time of dishonour of the cheque. According to the applicant, he is also not a signatory to the cheques in question, and therefore, he has not committed any offence under the Negotiable Insrument Act as alleged in the complaint. The applicant has, therefore, prayed that the complaint is required to be quashed and set aside.

5. Heard learned Counsel Ms.. A.R.Acharya, learned Counsel for the petitioner, learned A.P.P. Mr. Bhatt for the respondent no.1-State and learned Advocate Mr. Gandhi for the respondent no.2-

original complainant.

6. Learned Counsel for the petitioner Ms.A.R.Acharya argued that in the complaint there is no specific allegation to the effect that the present applicant was in charge of and responsible for the management of the day to day affairs of the company. According to her, this being a mandatory requirement under Section 141 of the Negotiable Instruments Act, on this ground alone the Court can come to the conclusion that no offence is made out and quash the complaint. The learned Counsel also submitted that the opponent no.2-original complainant was also one of the Directors in the said Company and at the time of resignation of the opponent no.2, one of the Directors of the Company entered into a Memorandum of Understanding with the opponent no.2. According to the learned Counsel the present applicant had neither signed the cheques in question nor is he a signatory to the the Memorandum of Understanding. Under the circumstances it is submitted by the learned Counsel that the present applicant has not committed any offence under the Negotiable Instruments Act as alleged in the complaint.

7. Learned Counsel for the respondent no.2 Mr. Gandhi submitted that the present applicant was incharge of day to day affairs of the Company and responsible for the conduct of the business of the Company and that there is a specific recital in the

complaint to this effect.. The learned Counsel also submitted that for deciding this issue reording of evidence is essential which is only possibole during trial. He, therefore urged that the application is required to be dismissed.

8. Learned Counsel for the petitioner had relied on the decision of the Apex Court rendered in the case of S.M.S.Pharmaceuticals Ltd. v. Neeta Bhalla & Anr. Reported in 2007 SCCL.COM 189 in support of his contention that in absence of an averment in the complaint to the effect that the present applicant was incharge of and respondible for the conduct of the business of the Company, the complaint is required to be quashed.

9. Learned Counsel for the respondent no.2 on the other hand submitted that since the statements made in the complaint of the respondent no.2 taken at the face value, make out an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the application filed under Section 482 of the Criminal Procedure Code cannot be granted and are liable to be dismissed. It is also submitted that the question whether the present applicant was a Director of the Company and was incharge of and responsible for the day to day affairs of the company and in the conduct of the business of the Company cannot be considered at this stage for quashing the complaint and that the truthfulness of such allegation is a matter which is to be decided during trial. Under these

circumstances, it is submitted by the learned Counsel that the application deserves to be dismissed.

10. It is settled law that this Court in exercise of its inherent jurisdiction under Section 482 of the Criminal Procedure Code would not make any roving inquiry into the questions of fact and record any findings. It is the duty of the trial Court. This Court has only to scrutinize the FIR/complaint and take the allegations made in the complaint on their face vale and quash the proceedings if the complaint does not disclose commission of any offence. Truthfuless or otherwise of the allegations made in the complaint or the evidence collected or the charge-sheet , as the case may be, cannot be gone into by this Court in exercise of its inherent jurisdiction. In the instant case, it is important to note that the respondent no.2 in the complaint had made a specific allegation to the effect that the present applicant was incharge of the day to day affairs of the company and was responsible for the conduct of the business of the company.The question whether the present applicant was in charge of and responsible for the conduct of the business at the time of offence is a disputed question of fact which can only be gone into by the trial Court and it shall always be open to the applicants to raise all such objections. Reference in this connection may be had to the decision rendered by the Apex Court on 19-4-2007 in the case of N.Rangachari v. Bharat Sanchar Nigam Ltd. (Criminal Writ Petition no.592 of 2007(Arising out of SLP

(Cri.) no.1844 of 2006)) wherein at paragraph 18 of the judgment it has been observed as under:

" In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were Directors of the company and were incharge of the affairs of the Company It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the others are not alleged to be persons incharge of the affairs of the Company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant."

11. Thus, having regard to the facts and circumstances and nature of the allegations levelled in the complaint, I do not think that it would be appropriate for this Court to quash the complaint at this stage in exercise of its inherent jurisdiction under Section 482 of the Code. The Criminal Misc. Application, therefore, fails and is dismissed. Rule is discharged,

12. However, the learned Judicial Magistrate, First Class,

Surat , shall dispose of the proceedings in Private Criminal Complaint no.1243/2004 without being influenced by any of the observations made in this order, as they are confined only for the purpose of disposal of this application.

(M.D.Shah,J.)

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